

MINUTES
BOARD OF COAL MINE SAFETY
DEP Cambria Office
June 1, 2021 – 10 a.m. – Ebensburg, PA

VOTING BOARD MEMBERS PRESENT

John Stefanko, DEP, Deputy Secretary for Active and Abandoned Mining Operations
Bobby Bodenschatz, PCA
Ron Bowersox, UMWA
Todd Moore, PCA
Frank Reidelbach, UMWA
James Sabella, UMWA
Joseph Zelanko, PCA

DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT

Chas Washlack, DEP, Bureau of Mine Safety
Arthur Brower, DEP, Bureau of Mine Safety
Peggy Scheloske, DEP, Bureau of Mine Safety

DEPARTMENT OF ENVIRONMENTAL PROTECTION STAFF PRESENT VIA TELEPHONE

Richard Wagner, DEP, Director, Bureau of Mine Safety
Jim Schuessler, DEP, Bureau of Mine Safety
Dustin Mowery, DEP, Bureau of Mine Safety
Robert “Bo” Reiley, DEP, Bureau of Regulatory Counsel
Chris Minott, DEP, Bureau of Regulatory Counsel
Laura Griffin, DEP, Policy Office
Abbey Cadden, DEP, Policy Office

OTHERS PRESENT

Rachel Gleason, PCA
R. Henry Moore, Fisher Phillips, LLP

OTHERS PRESENT VIA TELEPHONE

None.

CALL TO ORDER AND APPROVAL OF MINUTES

John Stefanko, DEP Deputy Secretary for Active and Abandoned Mining Operations and Acting Chairperson of the Board of Coal Mine Safety called the meeting to order at 10:08 a.m. in the DEP Cambria Office, Conference Room 1A/B in Ebensburg.

Acting Chairperson Stefanko asked those present in person and virtually to state their names and who they represent.

The Board considered its first item of business which was approval of the September 1, 2020, meeting minutes.

Ron Bowersox moved to adopt the minutes to the Board. Frank Reidelbach seconded the motion. The motion was unanimously approved by the Board, and the minutes were adopted as presented.

Public Comment Overview and Proposed Regulatory Amendments for E-Cigarettes

Acting Chairperson Stefanko informed the members that on September 1, 2020, the Board adopted a proposed rulemaking to address prohibiting the use of all electronic smoking/vaping devices in underground mines to enhance the safety of miners. The rulemaking was published in the *Pennsylvania Bulletin* on March 13, 2021, with a 30-day public comment period that closed on April 12, 2021. The Department received one public comment from the American Lung Association in Pennsylvania, which is supportive of the proposed regulation.

The Department also received comments on the proposed rulemaking from the Independent Regulatory Review Commission (IRRC) and the Office of the Attorney General. The Department would like the Board's input on the Department's suggested changes to the regulatory language in response to these comments, and to explain how the Department intends to address other concerns IRRC raised.

- 1) For Section 208.376, IRRC noted that the lists of smoking-related prohibited items are not identical in subsections (b) and (d).

Language at issue:

(b) An individual may not at any time enter a mine with or carry into the mine any smoking or smoker related articles, matches, pipes, cigars, cigarettes, electronic liquid-vaporizing devices, including e-cigarettes, or any device for making flames or fire not approved under section 350 of the act (52 P.S. § 690-350).

(d) An individual who violates the mandatory safety standards relating to smoking or the use or carrying of smoking materials, including electronic liquid-vaporizing devices, including e-cigarettes, matches or lighters, shall be subject to a civil penalty assessed by the Department that:

The Department recommends that the language in these subsections be revised to ensure that they cover the same prohibited items. This can be done in one of two ways:

- Make both lists of items identical.

OR

- List all prohibited items in subsection (b) and then remove the list of items from subsection (d) and replace with a reference to “items identified in subsection (b).”

After discussion, the members agreed that all prohibited items should be listed in subsection (b) and the list of items from subsection (d) should be removed and replaced with a reference to “items identified in subsection (b).”

- 2) The Office of Attorney General inquired how the Department would determine the amount of the civil penalty, since the language in both provisions states that the penalty “may not be more than the maximum”.

After consulting with Department Mine Safety staff, the Department recommends that the language be revised to state that the penalty “will be the maximum civil penalty provided under 30 CFR 1005.(d)...”

Discussion ensued and members all agreed with the Department’s recommendation.

- 3) IRRC also requested that the Board explain the process used to determine that an individual has violated the mandatory safety standards in Section 208.375 and how the subsection regarding the Department exercising other remedies available will be implemented. IRRC also suggested that the Board consider clarifying the subsection by revising the regulatory language to explain the additional remedies available.

The Department recommends including an explanation of the investigation process and how other remedies are implemented in the preamble of the final rulemaking.

Acting Chairperson Stefanko explained that IRRC is looking for an outline of the process for investigation and how a determination is made and suggested that the Board provide it in the preamble of the rulemaking, rather than the regulation. Chris Minott further explained that the IRRC is looking for explanation on the investigation process and how penalties are assessed and what other remedies are available besides revoking certification. The explanation would include language to describe levying a penalty on apprentice miners who are not certified, since apprentices have no certification to revoke, and also remedies for operators.

There was discussion about whether the miner would be represented during any investigation. Bureau Director Wagner explained that the investigative process would continue to include that option and any mine with union representation would be allowed to have a representative present.

The Department will make these revisions and a final regulation will be presented at a future Board of Coal Mine Safety meeting for approval.

OTHER BUSINESS

Acting Chairperson Stefanko asked if there was any other business the Board would like to

consider. No other business was brought forward.

PUBLIC COMMENTS

Acting Chairperson Stefanko asked the members of the public in attendance if they would like to provide any other comments.

Diesel-Powered Equipment: Extend Oil and Filter Change Interval from 100 hours to 200 hours

Rachel Gleason noted that at the last meeting of the Technical Advisory Committee on Diesel-Powered Equipment there was discussion regarding an industry request to extend the oil and filter change interval from 100 hours to 200 hours, considering the use of synthetic oil. Gleason stated that if this is something that the Department and Board would like to consider, PCA would be happy to assist in drafting legislation.

Ron Bowersox, Board member and member of the TAC, reported that this item is presently being considered by the TAC. After further discussion, it was determined that if the requirement is in the statute it would require a legislative change.

Acting Chairman Stefanko explained that if the Department would like to pursue a change, this item can be presented to the Board for consideration and then forwarded to the legislature. No action can be taken today. The Board will add this item to the agenda for the next meeting for further consideration.

There was further discussion regarding the advantages of changing the oil change interval from 100 hours to 200 hours.

Longwall Shear Cable Splicing Policy

Rachel Gleason asked if the Board would consider reviewing the current policy regarding longwall shear cable splicing, which was produced by the DER Section 334 Task Force in 1990. Gleason asked if there was an electrical task force. Bureau Director Wagner reported that there is an electrical task force, which includes Art Brower, Chas Washlack, Chris O'Neil, and Joe Somogyi from Rosebud.

The policy indicates that these splices will be poured. In recent years, MSHA has approved a splice kit that does not require them to be poured. The request is to either update the policy or produce legislation to allow for use of the MSHA kit.

After further discussion, it was determined that industry is only interested in splicing of the longwall shear cable.

Acting Chairman Stefanko said that the Department will review the request to adopt the MSHA kit and if they would like to move forward with this, the Department will have the current policy reviewed by counsel to see if this would be a regulation or policy change. This item will be placed on the agenda for the next Board meeting.

Acting Chairman Stefanko asked if there was any other public comment and there was none.

DEP Office Update

Acting Chairperson Stefanko gave an update on DEP offices. The offices are still closed with a tentative plan to slowly have staff start returning to offices in July, but no information had been provided regarding when buildings would be reopened to the public. There will also be consideration for some employees to continue teleworking. The Department is able to have some in person meetings, but remote attendance is still recommended at this time. Acting Chairperson Stefanko noted the Mining Program has been fortunate that some hiring freeze exemptions were allowed for several Bureau of Mine Safety positions.

Mine Safety Bureau Director Report

Rich Wagner, Mine Safety Bureau Director, informed the members that Bituminous Program Manager Jim Schuessler's last day will be July 2nd and thanked Schuessler for the years of service. Wagner also reported that Scott Hamilton, Mining Engineering Manager, and Bill Kokla, Mine Safety Inspector, would also be retiring on July 2nd.

Director Wagner reported that the Bureau has been able to backfill these positions while the incumbent is present, which is not the usual practice and will hopefully minimize any lapse in services, and requested patience with management and staff. The Bureau currently is experiencing a bottleneck with credible evidence reviews due to limited staff. However, the Bureau has added a licensed professional geologist and moved a mining engineering consultant position from the Pottsville anthracite staff to the New Stanton Office. This minor reorganization should help resolve the backlog and Director Wagner thanked John Stefanko and staff for assistance in making this happen.

Wagner also related that there would be no mine rescue competitions for the remainder of this year and Dustin Mowery could answer any questions.

Rachel Gleason stated that the turn-around on the credible evidence reviews had increased and thanked Director Wagner.

E-Cigarette

Acting Chairman Stefanko asked Laura Griffin to give a brief review of the E-cigarette regulation review process. Griffin informed the members that now that the Board has provided input, the final rulemaking documents can be drafted with updates and information can be added to the preamble. The final rulemaking will be routed through the Department's internal regulatory review process and the Office of General Counsel before presentation to the Board, hopefully in time for the next meeting scheduled for September 7th. Griffin noted that personnel constraints make estimating the timeline for the review process challenging, adding the example that there is only one person in the Office of General Counsel to review all agencies' rulemaking documents.

ADJOURNMENT

The next Board meeting is scheduled for September 7, 2021, at 10 a.m. at the DEP Cambria Office in Ebensburg.

With no further business to discuss:

Joseph Zelanko made a motion to adjourn the meeting. Frank Reidelbach seconded this motion, which was unanimously approved by the Board.

The meeting adjourned at 10:50 a.m.